

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRIAN BURKE,

Plaintiff,

-against-

CULLEN & TROIA, P.C. and
KENMORE ASSOCIATES, L.P.,

Defendants.

AMENDED ANSWER
AND COUNTERCLAIM

Case No. 12 CIV 4280

Defendant KENMORE ASSOCIATES, L.P. (hereinafter "KENMORE") by their attorney Wayne L. Desimone, Esq., as and for their Answer respectfully set forth as follows:

1. Denies knowledge or information thereof sufficient to form a belief as to the allegations in the paragraphs of the Complaint numbered "1", "2", "3", "4", "5", "6", "9", "10", "13", "14", "15", "16", "17", "18", "21", "23", "24", "26", "27", "28" and "29",

2. Denies each and every allegation in the paragraphs of the Complaint numbered "7", "8", "11", "12", "19", "20", "22", "25", "30" and "31".

ANSWERING COUNT 1

3. Denies knowledge or information thereof sufficient to form a belief as to the allegations in the paragraph of the Complaint numbered "33".

ANSWERING COUNT II

4. Denies knowledge of information thereof sufficient to form a belief as to the allegation in the paragraph of the Complaint numbered "35".

ANSWERING COUNT III

5. Denies knowledge or information thereof sufficient to form a belief as to the allegations in the paragraph of the Complaint numbered "37".

ANSWERING COUNT IV

6. Denies knowledge or information thereof sufficient to form a belief as to the allegations in the paragraph of the Complaint numbered "39".

ANSWERING COUNT V

7. Denies each and every allegation in the paragraphs of the Complaint numbered "41".

ANSWERING COUNT VI

8. Denies knowledge and information thereof sufficient to form a belief as to the allegations in the paragraph of the Complaint numbered "43".

ANSWERING COUNT VII

9. Denies knowledge or information thereof sufficient to form a belief as to the allegations in the paragraphs of the Complaint numbered "45", "46", "47", "48", "49", "50", "51", "52", "53", "54", "55" and "56".

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

10. The Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

11. The Court lacks jurisdiction over the person of defendant Kenmore as a result of insufficient and improper service of process.

AS AND FOR A CROSSCLAIM AGAINST DEFENDANT CULEN & TROIA

12. In the event that the plaintiff herein suffered any loss or damage, which is expressly denied, such loss or damage was a direct and proximate result of the acts or omissions of defendant Cullen & Troia, P.C., without any conduct on the part of defendant Kenmore contributing thereto.

13. In the event that defendant Kenmore is found to be liable to the plaintiff herein, then said defendant is entitled to contribution from defendant Cullen & Troia, P.C. and is entitled to indemnification from said defendant.

AS AND FOR A COUNTERCLAIM AGAINST PLAINTIFF

14. Defendant Kenmore is the landlord of premises known as and located at 145 East 23rd Street, New York, New York 10010 (hereinafter "PREMISES").

15. Plaintiff BRIAN BURKE (hereinafter "BURKE" or "PLAINTIFF") is a tenant of Kenmore pursuant to a written lease agreement entered into on or about November 22, 1997.

16. Pursuant to the aforementioned lease agreement, plaintiff occupies Apartment 4R in the premises,

17. Pursuant to the aforementioned lease agreement, plaintiff agreed to pay Kenmore as rent the sum of \$660.00 each month in advance on the first day of each month.

18. Pursuant to said lease agreement, plaintiff has defaulted in rent payments and there is now due and owing from plaintiff to defendant Kenmore the sum of \$57,608.77.

19. No part of the aforementioned sum of \$57,608.77 has been paid although duly demanded.

20. In addition to the foregoing, plaintiff agreed to pay Kenmore any legal fees and costs incurred by Kenmore by virtue of a default in the payment of rent by plaintiff.

21. As a result of the foregoing, defendant Kenmore has been damaged in a sum to be determined by this Court, but in no event less than the sum of \$57,608.77 together with reasonable attorneys fees, costs and disbursements and interest thereon.

WHEREFORE, defendant Kenmore demands judgment as follows:

- (a) dismissing the instant action in its entirety;
- (b) judgment over and against defendant Cullen & Troia, P.C. for the amount of any sums awarded to the plaintiff over and against Kenmore's proportionate share as determined by the apportionment of responsibility adjudged herein;
- (c) on its counterclaim in an amount to be determined by this Court, but in no event less than the sum of \$57,608.77 together with an award of reasonable attorneys fees, costs and disbursements, and interest thereon;
- (d) the costs and disbursements of this action together with interest thereon and an award of reasonable attorneys fees; and
- (e) such other and further relief as to this Court seems just and proper.

Dated: New York, New York
July 25, 2012

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